LOS ANGELES BAR BULLETIN

In This Issue

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VOL. 23 **MARCH, 1948** **No. 7**

A HOME FOR LAWYERS?

By Walter L. Nossaman,
President, Los Angeles Bar Association

WALTER NOSSAMAN

THE fellowship existing among lawyers is of ancient lineage, and was accepted as of course when the Taming of the Shrew was written, three hundred and fifty years ago:

> And do as adversaries do in law,
> Strive mightily, but eat and
> drink as friends.

Perhaps, as Benjamin Cardozo suggests in one of his addresses, the solidarity of the profession is a defensive attitude induced by the traditional unpopularity of lawyers as a class. Perhaps it is a by-product of common intellectual interests and pursuits. Whatever the cause, there exists among lawyers a sense of comradeship not excelled in any other group or calling.

Our association, the third largest in the country, provides only occasional opportunities, and then mainly upon occasions somewhat formal, for social fellowship. In this we are behind the bar associations in some of the older communities, notably New York and Chicago, both of which provide dining and other facilities for the convenience and enjoyment of their members. These enterprises were not brought to maturity in a day. They are the product of time and planning, as a similar undertaking of our own would have to be. But they represent a long-range objective well worth striving for, and one which we also can reach if we have the vision to conceive and the will to pursue it.

NOSSAMAN—The Man Himself

Walter L. Nossaman was born in Kingman County, Kansas, June 10, 1886. Attended a "district" school and Kingman High School. A three-year interval between high school and college was spent as a teacher in the public schools of Kingman County. After graduation from Fairmount College, Wichita, Kansas (now the University of Wichita), he entered Harvard Law School, from which he was graduated in 1912. Admitted to the New York Bar in 1912, and to that of Washington (State) in 1913, he was engaged in general practice in Seattle until 1928. Illness having brought about a sojourn in California, he remained here, becoming trust counsel of Security Trust and Savings Bank (now Security-First National Bank of Los Angeles), and was admitted to the State Bar of California in 1928. In 1942, he returned to private practice in partnership with Joseph B. Brady.

President Nossaman is a nationally recognized authority on trusts. For some years past, he has been a lecturer on legal topics before professional groups, and is the author of articles in various legal periodicals, including the following: The Fourteenth Amendment in Its Relation to State Taxation of Intangibles, 18 Cal. L. R. 345 (1930); State Taxation of Income, 24 Cal. L. R. 524 (1936); Release of Powers of Appointment, 56 Harv. L. R. 757 (1943); Tax Problems Affecting Community Property, 26 Tex. L. R. 26 (1947). President Nossaman is the author of the nationally accepted authority, Trust Administration and Taxation (1945). Numerous recommendations made in his article, The Uniform Principal and Income Act, 28 Cal. L. R. 34 (1939), are reflected in the version of that Act later adopted in California (Stats. 1941, Ch. 898). He is also the author of outstanding articles published in the BULLETIN. He was chairman of the committee of the California Bankers Association which framed the statute adopting the prudent man rule for trust investments (Stats. 1943, Ch. 811, amending Civil Code, Section 2261).

President Nossaman's principal interests as a lawyer have been in the fields of trusts, taxation and community property. In connection with the last named activity, he wrote the brief filed by the Attorneys General of the eight community property states

as *amici curiae* in the community property estate tax cases, decided by the Supreme Court of the United States in December, 1945; and has within the past year discussed community property problems before the State Bar of Texas and the New Jersey Bankers Association. He is vice-chairman of the Real Property, Trust and Probate Law Section, American Bar Association, and is the legal editor for California of Trusts and Estates, New York, a magazine dealing with matters affecting fiduciaries.

President Walter Nossaman's hobby is golf, which he does creditably. He tied for low net in the January tournament of the Los Angeles Bar Association.

After serving on many of the major committees of the Los Angeles Bar Association, and as Junior and then as Senior Vice-President, he was installed last month as President of this Association.

He is a partner of the fine law firm of Brady and Nossaman, Los Angeles.

COURT TO TRY JUDGES

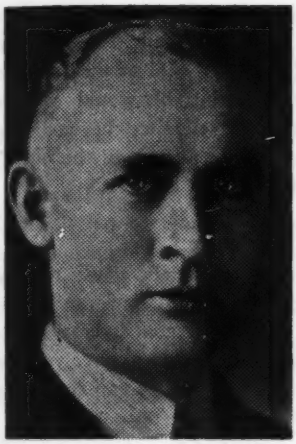
CREATION of a Court to try judges for misconduct or omission of duty has been unanimously approved in principle by the Judiciary Committee of the Los Angeles Bar Association, along the lines of the recent amendment to the constitution of the State of New York.

The committee was of the opinion that this matter should be referred to the State Bar of California for its consideration. The committee consists of **Arnold Praeger,** Chairman; **Clarence B. Runkle, Reginald Bauder, Arthur E. Freston, Stanley Howell, Joseph L. Lewinson, Alexander Macdonald, John C. Morrow, J. W. Mullin, Jr., Benjamin S. Parks, Thomas Reynolds, Sidney H. Wall,** and **Albert E. Wheatcroft.**

NOTE FOR BISCAILUZ

A wag has suggested that the BAR BULLETIN ought to be sent to the jail, for the guests there would have time enough to read it.

Millikan Pays Tribute To Judge Gavin W. Craig



CHARLES E. MILLIKAN*

Charles E. Millikan, Senior Vice-President of the Los Angeles Bar Association, paid a beautiful tribute to the fine legal ability of Judge Gavin W. Craig at a memorial session of the Second Appellate District Court of Appeals, Division Two, on January 28, 1948. Vice-President Millikan, as representative of the Los Angeles Bar Association, spoke in part as follows:

"Judge Craig, in the days when he was a member of the faculty of the College of Law of the University of Southern California, was one who paid the strictest attention to his own pattern of teaching in the instruction of his students. He had a firm belief in the importance of facts in the consideration of every judicial problem that confronted both Bench and Bar. In his classroom instruction, when there was a discussion of cases,

*Charles E. Millikan is a native of Kentucky. He attended preparatory schools in southern Illinois and came to California in 1908 where he entered the University of Southern California, being graduated in 1912.

From 1912 to 1925 Millikan was a member of the faculty of the School of Law, University of Southern California, with the exception of a break during World War I, when he was an officer in the Air Service, Aircraft Production. Returning to Los Angeles in January of 1919, he became Professor of Law and assistant to the Dean at the School of Law, U. S. C.

Millikan left the faculty of the Law School to enter private practice in 1925. He has recently been elected Senior Vice-President of the Los Angeles Bar Association and is a member of the House of Delegates of the American Bar Association. He has been District Governor of the California-Nevada District and an International Trustee of Kiwanis International.

Millikan is an outstanding practicing attorney, and is well known for the care with which he prepares his cases. He is a formidable opponent in a lawsuit and a pillar of strength for a troubled client. He is a partner in the well-known firm of Wright and Millikan, Los Angeles.

he insisted, some of his students believed almost to the point of absurdity, in seeing to it that every ascertainable fact that could be found in the opinion of the court should be presented and discussed.

"I can recall that some years later, after my own graduation from the Law School, I told Judge Craig of a remark made to me by one of his students, that if real property were involved in a case and there was a fence around the property, Judge Craig would not be satisfied with a recital of the fact that there was a fence around the property, but he would want to know the type of fence. If it were a picket fence, he would insist upon having the student relate whether or not all the pickets were on the fence, or if some of them were missing.

INSISTED ON FACTS

"Judge Craig said the story was absolutely true; that he would be thus insistent; that he did so for the purpose of emphasizing his concept that every justiciable controversy is dependent primarily upon the facts and circumstances involved and that the proper application of the principles of law can come only after a thorough knowledge of the facts.

"Judge Craig left his executive and administrative duties with the law school to become a member of the bench of the Superior Court of this county, having been elected in the fall of 1910, and ascended the bench at the first session of the court in January of 1911. He sat on the Superior Court bench until the 3rd of January, 1921, when he ascended the bench of this court which is here convened this morning. He served as a member of this court until March, 1937.

"A study of the opinions of Judge Craig while a member of this court convinces me that he carried into his work that same concept, which was his as a law teacher, of the importance of facts in a correct determination of the principles of law. His opinions, which are reported in Volume 51 California Appellate to Volume 17, 2d, attest his industry, his understanding of the law and his strict adherence to his belief in the importance of facts in the determination of controversies.

"My personal judgment of the opinions of Judge Craig is

(Continued on page 240)

EDITORIAL

C. G. STRATTON*

A NEW YEAR starts for the Los Angeles Bar Association. It is only natural that the BULLETIN shall change from administration to administration. It is bound to be a reflection of each new BULLETIN committee and each new editor. It varies as men vary.

This is why you may find the BULLETIN has a little of that "new look." But the hope is that the new committee will be able to maintain the same high standard of articles to which all have become accustomed in the BULLETIN.

The BULLETIN has had a long line of distinguished editors. Certainly no exception is Frank S. Balthis, Jr., who has done such outstanding work during the past two years. He has not only turned out a magazine of which the Los Angeles Bar Association has been proud, but he has also hit the heights by having outstanding articles written by him published by the American Bar Association Journal and by Case and Comment on law office management, attorney's fees, and the like.

This year it is the hope that the BULLETIN will contain a chronicle of the activities of the Association, including highlights of the addresses at the regular monthly meetings.

We hope you like the use of the pictures and the brief biographies.

Nose vs. Grindstone

"If your nose is close to the grindstone rough,
And you keep it down there long enough,
You will soon forget there are such things
As brooks that babble and birds that sing.
Three things your whole world will compose—
Just you, the stone and your darned old nose."

—By Randolph Kittleson, Realtor, Glendale.

*C. G. Stratton, the new editor of the Bulletin, was born in Kentucky, spent most of his life in Colorado, principally in Denver. A graduate of Denver University, A.B., '22, LL.B. *cum laude* '25. He is the president of the Denver University alumni in Southern California. His father edited a couple of country weekly newspapers, where he first got the smell of printer's ink in his nostrils. He was editor of the college newspaper at his University and is a member of Sigma Delta Chi, the national journalistic fraternity, and of Sigma Phi Epsilon social fraternity. He is a member of the Los Angeles Rotary Club, and past District Governor of Rotary in Southern California and Southern Nevada. He is the author of a number of articles on patent and trade-mark law and specializes in patents, trade-marks and copyrights, Los Angeles —*Note by Frank S. Balthis, Jr., former Editor.*

FAILURE OF COLLECTIVE BARGAINING AND CORPORATE LOSS AS GROUNDS FOR DIRECTORS' LIABILITY

By David P. Evans, of the Los Angeles Bar

Abrams v. Allen, 297 New York 52, 74 N. E. (2d) 305 (1947), was a suit by a minority shareholder seeking to hold the directors of Remington Rand personally liable for conduct alleged to have resulted in the unnecessary dissipation of corporate assets.

The Appellate Division had ordered the complaint dismissed for failure to state a cause of action (271 App. Div. 326, 65 N. Y. Supp. (2d) 421 (1st Dept. 1946)). The opinion of the Court of Appeals was based on the premise that if the complaint stated any fact which showed violation of the directors' duty of care or loyalty to the corporation, then dismissal would be improper.

Section 8 of the complaint alleged that in furtherance of the anti-labor policy of the corporation's management the defendant directors dismantled and removed plants, equipment and machinery and intentionally curtailed production (1) to the great loss of the corporation, (2) not for legitimate business grounds, (3) but to discourage, intimidate and punish the corporation's employees by removing their hopes of reemployment.

HELD ACTIONABLE

Categorically overruling the Appellate Division, the Court of Appeals held in a four to three decision that these constituted statements of actionable material facts.

Section 19 of the complaint alleged that the board of directors had allowed the corporation's president, one Rand, to dominate it and give expression to his prejudice toward labor in his conduct of the corporation's affairs. It was further alleged that in his actions Rand was not moved by any *bona fide* consideration of the corporation's welfare, but by malice, personal prejudice and bias; and that in so allowing itself to be dominated by one member, the board of directors had abandoned its duties

(Continued on page 236)

JUDGE PHILLIPS WARNS OF RUSSIA'S INTENTIONS

ORIE L. PHILLIPS*

IN a very able talk before the Los Angeles Bar Association, at its January meeting, Honorable Orie L. Phillips, Senior Justice, United States Circuit Court of Appeals, Tenth Circuit, admonished Southern California attorneys to, "Have Faith in the United Nations."

The United Nations "is the world's best hope of peace. It is all we have," pointed out the visiting Justice.

Judge Phillips took a very vigorous stand concerning Russia. At a climax in his speech, he pulled no punches, saying:

"I have no patience with those who say we should try to understand Russia, in the sense they use that phrase. My concern is not that we shall misunderstand her good intentions, but that we shall fail to understand her evil intentions, that we shall not correctly discern her international plans and objectives.

"If Russia is hell bent on world revolution; if she intends to undertake to impose her economic and political ideologies on the other nations of the world, and there is much evidence that such is her ultimate objective; if she intends to cooperate for the maintenance of peace only when it seems to her expedient so to do; and if she will not yield to the moral suasion of a righteous judgment expressed by the great majority of the law-abiding nations of the world; then the sooner we know her intentions, purposes and objectives, the better. It will enable America and

*Orie Leon Phillips was born on a farm near Viola, Mercer County, Ill., 1885. Attended Knox College, and then University of Michigan, where he received J.D. 1908, and which conferred LL.D. on him, 1935. Received Doctor of Engineering from Colorado School of Mines, 1940. Admitted to bar of New Mexico, 1910. Practiced at Raton, N. Mex. General attorney, St. Louis, Rocky Mt. & Pacific Co., 1917-23. Assistant District Attorney, 8th Judicial District of New Mexico, 1912-16. Member of New Mexico Senate, 1920-23 (Republican floor leader and chairman Judiciary Committee). 1923 appointed by President Harding to U. S. District Court, New Mexico. 1929 appointed U. S. Circuit Judge, 10th Circuit, by President Hoover. Visiting Professor of Law, summers, at Northwestern, 1936; at University of Michigan, 1938. Member Executive Committee, American Bar Association, 1929-32. President New Mexico Bar Association, 1921-23. Member of the Council of the American Law Institute. Chairman of the Council for the Survey of the Legal Profession, 1947 (see November, 1947, issue American Bar Association Journal).

the law-abiding nations of the world to wisely chart their future course in international affairs.

"We know that expediency, rather than principle, has dictated Russia's foreign policy in the past. It is difficult for me to forget her alliance with Hitler, her share in the rape of Poland, her unprovoked attack on little Finland, the agreement between Russia and Hitler for the division of Eastern Europe and shut Britain and the United States out of Europe, Asia and Africa, the supplies furnished by Russia to Germany from 1939 to 1941, and the fact that the alliance broke up only because the two villains disagreed on a division of the spoils!"

RUSSIA MISUSED VETO

Stressing the difference between the American and the Russian ideas of the veto power, Judge Phillips said:

"The American conception of the veto was that it would be used only for major purposes and in extreme emergencies. It was the hope of the American delegation that the interpretative statement accepted by Russia, along with the other great powers, would lessen the likelihood of the veto being used to obtain tactical advantages or to block ordinary decisions concurred in by a majority of the Council. That hope was a vain one. The veto has not been restricted to that interpretation. In slightly over two years of the Security Council's existence, Russia has resorted to the veto 21 times. In addition, the veto has been used once by Russia and France together, and once by France alone. As a result, effective action by the Security Council in matters of grave importance has been obstructed."

"I would authorize the Security Council to make its decisions by a two-thirds vote, subject to the sole limitation that no member nation should be required to use armed force without its consent.

"If Russia persists in her announced position that she will not consent to any change in the veto provision, against the judgment of two-thirds or more of the General Assembly, and two-thirds or more of the member nations, then I would adopt the only alternative and go ahead without Russia!"

In commenting on Southern California's January "cold" snap, Judge Phillips said that he had just left 20 inches of snow in Denver, and 14° below zero weather.

CROSS-EXAMINATION—A JUDGE'S VIEWPOINT

By Bernard L. Shientag,
Justice of the Appellate Division of the Supreme Court,
New York

JUSTICE SHIENTAG*

TO TALK on cross-examination is a rather bold undertaking. However, it was thought that the Bar might be interested to hear how cross-examination has impressed a Judge who, for many years, more than I like to acknowledge, has encountered it in trials and in records on appeal.

Now, cross-examination has been defined rather facetiously as the art of asking the right questions at the right time and in the right manner. Of course, that solves everything. Someone put it negatively that cross-examination is the art of not asking the wrong questions, at the wrong time and in the wrong manner. Strangely enough, there are grains of truth in these definitions. One of the most successful English barristers, Montagu Williams, said that the true art consisted in knowing either when not to cross-examine at all, or the exact place to stop.

THE FALLIBILITY OF HUMAN TESTIMONY

We start with the fundamental conception that a trial, under our procedure, is not a game or a battle of wits but a painstaking, orderly inquiry for the discovery of the truth. "We are not gifted with the power to discern truth with mathematical

*A native New Yorker, Justice Shientag obtained his A.B. from the College of the City of New York and his M.A. and LL.B. from Columbia. An honorary LL.D. was conferred upon him by St. Lawrence University. A member of the New York Bar for 40 years. Chief Counsel New York State Industrial Commission, 1919-21. Appointed Industrial Commissioner for the State of New York, 1923. Judge City Court, New York, 1924-30. Justice New York Supreme Court, 1930 to date. Phi Beta Kappa Formerly member of many commissions for industrial relations, for rehabilitation of handicapped persons, for child welfare, and for old age security. Author of "The Trial of a Civil Jury Action in New York," 1938; "Summary Judgment," 1941; "Moulders of Legal Thought," 1943; "The Personality of the Judge," 1944, and many law review articles. Permission to print the above article was kindly granted by Justice Shientag and by the Association of the Bar in the City of New York, the article having originally appeared in "The Record" of that Association.

certitude." We have to deal, therefore, with probabilities. Where the facts are in dispute cases, generally speaking, are proved by human testimony. The value of that testimony depends on the honesty of the witness, his means of knowledge, his memory, his intelligence and his impartiality. Every question is relevant which goes to indicate the presence or absence of those qualities or of any of them. The object of cross-examination may be described as threefold: First, to elicit from an adverse witness something in your favor; second, to destroy or weaken the force of what the witness has said against you and, third, to show from the present attitude of the witness or from his past experience that he is unworthy of belief in whole or in part.

Deliberate perjury in civil cases, except possibly in divorce actions, is quite rare. But the fallibility of human testimony, given with the best intentions, has long been recognized. Indeed, some scientists have proposed that a witness should be subjected to psychological tests to detect flaws which would necessarily affect his testimony. The lawyer seeks to discover those flaws, and in exceptional instances to unmask perjury, by the method of cross-examination—the only method for that purpose which our present trial procedure affords. The cross-examiner must, therefore, be something of a psychologist himself. Indeed, I have often wondered why the law schools and the foundations interested in legal research have not made extensive studies into the psychological principles underlying the reliability of testimonial narrative and the art of persuasion. Be that as it may, the successful cross-examiner must be a student of human nature and understand its strength and its weakness. He must know how to handle different types of people.

Science struggles constantly against the imperfections of our sensorial system: the inability of the senses accurately to register impressions. Some idea of our limitations in that regard may be gained when we consider the innumerable new facts revealed by slow motion moving pictures.

MIXES IMAGINATION AND FACTS

Descriptions of what a person sees or hears are in many instances grossly inaccurate and they become increasingly so with the lapse of time between the original experience and the repro-

(Continued on page 242)

COMMITTEE CRITICIZES H. R. 2575

A SPECIAL committee of the Association criticizes several sections of H. R. 2575, now before Congress, amending Articles of War relative to Military Justice.

Composed of men familiar with its administration, the committee admitted that from their personal experience and observation, much of the criticism leveled at the administration of military justice during World War II was deserved and quite justifiable.

The committee endorsed the bill except for Sections 33 and 46 to 49. Section 33 prohibits a Commanding Officer from reprimanding or censuring the action of a Court-Martial that he appoints. "To deprive a Commanding Officer, who is responsible for the discipline and even the life of his men, the privilege of expressing his disapproval in proper instances, appears illogical," in the opinion of the committee.

Sections 46 to 49 seek to establish a Judge Advocate General's Corps. This, in the view of the committee, destroys the "unity of command essential to the successful operation of an Army." The committee believes that such a separate Corps undermines the very essential of "unity of command."

Copies of this very excellent report have been sent by the office of the Executive Secretary of the Association, J. Louis Elkins, to the Senators from California, members of the House from Los Angeles County, and to the Committees on Armed Forces of both the House and Senate.

Members of this able committee are Joseph N. Owen, Chairman, William W. Alsup, E. Avery Crary, Louis E. Kearney and Brenton L. Metzler.

LOT OF OTHERS, TOO

Judge Harry S. Class, of Denver, was on the witness stand in a case. The cross-examining attorney facetiously asked Judge Class:

"Q. What is your occupation?

"A. Oh, I'm a farmer and a lawyer.

"Q. Which are you, a farmer or a lawyer?

"A. Well, my farmer friends call me a lawyer, and my lawyer friends call me a farmer."

THE CORPORATIONS CODE

By Leroy A. Garrett, of the Los Angeles Bar

THE legislature in 1947 enacted a Corporations Code (Stats. 1947, Ch. 1038) and effected a number of changes in the corporation law. Many of the changes made by the legislature in 1947 appear to be procedural rather than substantive, and a number of them will be briefly noted here.

There are innumerable clarifications which apparently do not, however, change the law in any respect. A good example of such a clarification is the definition of a writing found in Corporations Code §8. This was formerly contained in Civil Code §278, where "written" was defined as including printed, typewritten, engraved, lithographed, telegraphed, cabled, radiogrammed, photographed, photostated, telephotographed, or transmitted and recorded in any other form. This hodgepodge has been simplified in the Corporations Code §8, as follows: "Writing includes any form of recorded message capable of comprehension by ordinary visual means."

Section 501 (d) of the Corporations Code adds to the list of items which previously have been subject to regulation in the by-laws the compensation of directors. Section 810 of the Corporations Code deals with the removal of directors by the shareholders. To the former provision that the directors may be removed by a majority vote of the shareholders is added the sentence, "Whenever a class or series of shares is entitled to elect one or more directors under authority granted by the articles, the provisions of this paragraph apply to the vote of that class or series and not to the vote of the outstanding shares as a whole." (Amended by Stats. 1947, Ch. 1232.)

An important change affects §1713. This section as originally codified stated that where the articles prohibit the reissue of any of its shares acquired by a corporation, then, upon their acquisition, the authorized number of shares of the class to which such shares belonged is reduced by the number of shares so acquired. A new paragraph has been added to this section by Stats. 1947, Ch. 1119, to the effect that upon such acquisition the articles must be amended to reflect such reduction in au-

(Continued on page 234)

Great Public Defender Retires

By Edward Harton, Deputy City Public Defender

WHEN an outstanding public servant retires from public life, the fact is deserving of more than passing notice. Especially is this true when his career is an inspiration now and will be for coming years.

After serving Los Angeles as City Public Defender for the past seventeen years, Frederick M. Hall retired to private practice on January 15th. Long the leader in Public Defender work in this community, his retirement will be keenly felt by those privileged to be associated with him in his Department, by his many friends in the Civic Center, as well as by the community at large.

A native of Massachusetts, Fred Hall sprang from sturdy New England stock—virtuous and liberty-loving people. He received his early education at Lyndon Institute and St. Johnsbury Academy in Vermont, attended the Emerson College of Oratory and later received his law degree from Boston University.

He took over the office of Los Angeles City Public Defender in 1930, eminently equipped for the job. He had come West with those things which in this land of opportunity are of paramount value—a sound body, a robust intellect, the highest courage, rugged honesty, and a worthy ambition to serve his fellowmen.

DISTINGUISHED LITERARY CAREER

Prior to his coming West, he had engaged in private practice, served for a number of years as United States Commissioner of Arizona, and served in the City Prosecutor's office. He had had a distinguished literary career, having authored many treatises, served as one-time Associate Editor of the Encyclopaedia of Evidence and later as Dean of the American Extension University. He had written and published books on law, including the Law of Negotiable Instruments, Sales, Agency and Mining Law. He brought to the office legal acumen, broad human understanding, personality.

In the office, Fred Hall's influence has been potent for good.

(Continued on page 232)

NEOPHYTES

To old members: Get acquainted with and welcome the following new members of the Los Angeles Bar Association, who have joined since July 1, 1947.

To the following new members: at meetings of the Association and elsewhere, make yourselves known to the older members:

DAVID E. AGNEW
MERTON A. ALBEE
LEON S. ALSCHULER
ROBERT W. ANDERSON
JAMES J. ARDITTO
CARL W. BARROW
RALPH RICHARD BENSON
JOSEPH R. BIAFORA
WARREN H. BISCAILUZ
EDWARD H. BLIXT
HARRY W. BRELSFORD
W. A. CALDECOTT
JAMES R. CARNES
ALFRED P. CHAMIE
LLOYD E. CLENDENING
THOMAS CONNELL
MANLEY C. DAVIDSON
CLYDE C. DOWNING
V. EDWARD DRAKE
ANSON I. DREISEN
REGINALD L. DYER
ROBERT E. EARLY
WALTER ELY
GORDON MARK EMANUEL
JOHN L. FLYNN
MORTON GARBUS
EDWARD H. GAYLORD
ARCHIE J. GETZ
ALBERT J. GILBERT
MILNOR EARL GLEAVES
EDWARD GORMAN
HENRY GRIVI
CLIFFORD P. GRUA
FRANKLIN T. HAMILTON
PHILIP H. HARRIS
DAVID P. HATCH
WILLIAM P. HAUGHTON
EARL HIGHTOWER
JOHN R. JACOBS, JR.
WINTHROP JOHNSON
JACKSON A. JORDAN
RICHARD H. KEATINGE
C. M. KILPATRICK
JAMES H. KINDEL, JR.
FRANKLIN D. LAVEN
SYLVIA SIRKIN LEADER
CURTIS CLEMENT LEGERTON
JOHN R. Y. LINDLEY
EARL O. LIPPOLD
GEORGE C. LYON
HUGH H. MacDONALD
DAVID A. MATLIN
IRA J. McDONALD
WALTER S. McEACHERN
WHITE McGEE, JR.
DONALD C. McGOVERN
HARVEY R. McKEE
DAVID L. MOHR
BRYAN S. MOORE
DAVID C. MOORE
CHARLES C. MORRISON
CHARLES R. NEWBY
ROBERT M. NEWELL
H. BURTON NOBLE
MORRIS PFAELZER, II
SAMUEL B. PICONE
HARMEL L. PRATT
LYMAN P. ROBERTSON
HUGH B. ROTCHFORD
EDWARD A. SARKISIAN
HON. B. J. SCHEINMAN
E. L. SEARLE
BYRON D. SEAVER
JULES JOHN SHERMAN
SEYMOUR D. SOMMER
DANIEL NORMAN STEVENS
FREDERIC H. STURDY
HENRY R. TAECKER, JR.
JAMES W. Z. TAYLOR
BENJAMIN U. VEGA
R. F. WADE, JR.
HARRISON WEIL
JOSEPH JONAS WEISSMAN
JOHN L. WELBOURN
LOUIS M. WELSH
ROYAL G. WILKIE
LOYD WRIGHT, JR.
WALTER H. YOUNG
SAMUEL S. ZAGON
JOHN G. ZELEZNY, JR.

Lecture Series Is Sell-Out Again

By William A. C. Roethke, of the Los Angeles Bar

BECAUSE of the tremendous number of applicants for the 1948 Law Lecture Series of the Los Angeles Bar Association, the enrollment limit of 275 was quickly reached. Then the Committee, with the generous cooperation of the very splendid panel of speakers, was able to arrange for a second series with each lecture repeated. This second series also soon hung up the "S.R.O." sign. Naturally this enthusiastic and overwhelming response has been most gratifying, and indicates the genuine interest of the bar of Los Angeles County in this aspect of continuing education.

As a result of the success of these lectures during the last ten years and to further extend the benefits of such work, the State Bar of California has announced a program, in association with the University of California, Extension Division, of continuing education of the bar, with series of lectures to be given not only in various cities in Los Angeles County but throughout the State. The bar of Los Angeles County can take pride in its real contribution to this program.

The BULLETIN extends a WELL DONE to Chairman Joseph D. Peeler and his committee, consisting of Robert Ballantyne, George I. Devor, Ross C. Fisher, Dana Latham, Brenton L. Metzler and William A. C. Roethke. Particular thanks is also extended to the lecturers who have contributed so much of their time and effort to making this popular series an outstanding success.

GOLF TOURNAMENT

Victor P. Showers, the Association's able Golf Committee chairman, has turned in a complete report after a very successful year. Eleven tournaments were held during the year. (December was missed due to the congested conditions of the different golf clubs.)

Chairman Showers recommended, instead of holding the tournaments at different clubs, that arrangements be made to play on the same course each month. He suggested Inglewood as a possibility, when its clubhouse is rebuilt.

Showers stated that golf balls were the most acceptable prizes—rather than trophies. He reported that about 175 players participated during the year, having between 30 and 50 at the respective meets.

Chairman Showers recommended sending out mimeographed notices of the tournaments, and suggested the continuing use of Wm. H. Yost to assist in running the meets.

"One would be ungrateful if he did not mention the kindly courtesy and cooperation which the Bar Association has received from The Los Angeles Daily Journal, particularly through the good offices of our good friend Izzy Moore, they having, throughout, assisted in prizes, and by printing such notices from time to time as have been suggested to them," praised Showers.

The Golf Committee which efficiently assisted Chairman Showers were: Clarence B. Runkle, board member; Fred Aberle, Joseph D. Brady, Robert L. Corfman, Hon. Clarence L. Kincaid, and Pat A. McCormick.

Arvin B. Shaw, Jr., and **William L. Murphey** have announced the admission of **Frank E. Jenney** (formerly Captain, A. U. S.) to the firm of **Stewart, Shaw and Murphey,** 835 Rowan Bldg.

The BULLETIN will publish changes in firm personnel, new addresses, and other personal information, if you will send it in.

GUESTS OF HONOR

GUESTS of honor at the head table for the January meeting of the Association, who besides the speaker were introduced by the then President Paul Fussell, were the following:

Honorable Paul J. McCormick (1924), Senior Judge, U. S. District Court, and the following Judges of the same Court: **Honorable J. F. T. O'Connor** (1940), **Honorable William C. Mathes** (1945), and **Honorable Jacob Weinberger** (1946). (The dates indicating their appointment to the Federal bench.)

Walter L. Nossaman, then President-elect, of the Association; **Judge Daniel N. Stevens,** newly appointed to the Municipal Court; **Honorable Marion J. Harron,** U. S. Tax Court, and **Gurney Newlin,** Past President of the American Bar Association, and a long time friend of the speaker, **Honorable Orie L. Phillips,** Senior Justice, U. S. Circuit Court of Appeals, Tenth Circuit.

GREAT PUBLIC DEFENDER RETIRES

(Continued from page 227)

He has worked untiringly, to use his own words, "to convince the poor man in trouble that his government makes good in its solemn assurance that every man is entitled to equal protection of the law." Because of his efforts there are in this community fewer people who believe it takes a gold key to unlock the courthouse door. There are fewer who believe the law is the rich man's plaything.

Justice Cardozo once said that the most important thing about a man is his philosophy of life. If the writer rightly understands the aim of Fred Hall's life or correctly interprets the philosophy of life which has inspired his work, that aim and that philosophy are aptly expressed in these lines of the poet:

"I live for those who know me true;
For the heaven that smiles above me
And awaits my spirit too;

For the cause that lacks assistance,
For the wrong that needs resistance,
For the future in the distance,
And the good that I may do."

THE CORPORATIONS CODE

(Continued from page 226)

thorized shares and a certificate of amendment shall be made and filed in accordance with the regular requirements for amendments to the articles. The votes or consents of the shareholders are not required for the adoption of this amendment, but if it is made without their votes or consents, then the certificate must show that the amendment was made pursuant to §1713.

NOMINEES MAY VOTE STOCK

Section 2218, as it originally appeared in the Civil Code (§320(b)(1)), stated that shares standing in the name of any person as pledgee, trustee or other fiduciary, might be voted and all rights incident thereto might be exercised only by the pledgee, trustee or other fiduciary in person or by proxy, and without proof of authority. To this has been added a sentence to the effect that when a trust company has caused shares to be registered in the name of one or more nominees of the trust company pursuant to §105 of the Bank Act, such shares may be voted and all rights incident thereto may be exercised by such nominee or nominees without proof of authority (Stats. 1947, Ch. 101).

As §4019 apparently was first codified, it contained a provision that notice of the approval by the shareholders and directors of a corporation of a plan of merger and consolidation had to include the manner and basis of converting shares of the constituent corporation into shares of the surviving or consolidated corporation, and inform the shareholder of his rights as a dissenter under the appropriate sections of the code. This provision was nullified by Stats. 1947, Ch. 1232, and as the section now stands it requires the mailing only of notice of the approval to each of the corporation's shareholders.

To the roll of persons (any director, trustee, creditor, shareholder, member, or their assigns or successors in interest) who may petition a superior court for a determination of the identity of the directors or the appointment of directors or trustees to wind up the affairs of a corporation under §4804, is added the phrase "or any other interested person" (Stats. 1947, Ch. 794).

In §4807, which deals with the power of the court to determine the identity of the directors or the trustees if it is in doubt, or remove any from office who are unable or refuse to

act or who are unknown, the phrase "and appoint fit and proper persons as directors or trustees in the place of those who are removed" is eliminated and in its place is substituted the following: ". . . and, regardless of the authorized number of directors or trustees, to appoint one or more fit and proper persons as directors or trustees of such corporation or dissolved corporation, the number to be at the discretion of the court." (See Stats. 1947, Ch. 794.)

Section 5001, dealing with adequate provisions for the payment of debts and liabilities of a dissolved corporation, has been amended by the addition of the phrase "or by the United States Government or any agency thereof" to the list of those who may assume or guarantee in good faith such debts or liabilities (Stats. 1947, Ch. 1231).

MAY DEPOSIT MONEY

Section 5010 has been amended by the substitution of the word "may" for "shall" at the indicated place: "If there is any unclaimed deposit or dividend payable or any debt owed by

a corporation in process of winding up or dissolution to any person whose whereabouts is unknown to the directors, trustees or other persons conducting the winding up, they *may* deposit the amount due such person with the state treasurer or with some bank or trust company in this state . . ." (Stats. 1947, Ch. 1231.)

Formerly, upon the winding up of a corporation's existence without court proceedings, the certificate need only have stated that the known debts and liabilities had been actually paid or adequately provided for or paid as far as the assets permitted or that there were no known debts or liabilities, as the case might have been. By an amendment to §5200 (Stats. 1947, Ch. 1231), if there are known debts and liabilities for the payment of which adequate provision has been made, the certificate must state in addition what provision has been made and it must set forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment or the name and address of the depositary with which deposit has been made or such other information as may be necessary to enable a creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

There is a similar and parallel provision for declarations which must be made in the order declaring a corporation dissolved where the directors petitioned the superior court for a dissolution order in lieu of filing a certificate with the Secretary of State. (Corporations Code, §5204; as amended by Stats. 1947, Ch. 1231.)

FAILURE OF COLLECTIVE BARGAINING

(Continued from page 220)

and thereby had committed a breach of trust to the injury of the corporation. These averments were also held by the Court of Appeals to be allegations of fact rather than conclusions.

The Court in its opinion noted that the public policy of New York and the nation is opposed to the removal of factories for the purposes alleged (citing New York Labor Law, Section 704; N. L. R. A., Section 8), and it concluded:

> "Whether, or how, these accusations may be proven is not our present concern. These defendants may not have done these things at all, or they may have done

them for the best of reasons. But the complaint, which we are bound to take as true at this point, says the opposite. If we dismiss, we are saying that for such spoliation of a corporation, there is no redress. The case should be tried."

NOT AS BAD AS MAY SEEM

It is believed this decision is not in fact as startling as at first glance it might seem. In the general field of directors' liability the decision perhaps suggests an area of liability not previously often considered, but it hardly establishes any new principle of liability. In the field of collective bargaining, however, it obviously suggests some standards of conduct for corporate employers. In effect, the Appellate Division had held that resistance to the demands of labor unions was a reasonable exercise of the discretion of corporate directors—no matter to what extreme such resistance might go. The decision of the Court of Appeals apparently places a limit upon such resistance—that limit being the point at which resistance has so

clearly ceased to be to the best financial interests of the corporation that the motive of its management cannot be explained on the basis of corporate self interest. Normal collective bargaining by corporate representatives does not often require threats of shutdown or removal of a plant in order to resist labor union demands deemed unjustified. In those rare cases where that extreme position seems unavoidable, this Court of Appeals decision points to the advisability of basing the threat not on a vindictive desire to defeat the demands of the union at any cost, but upon the perfectly sound economic ground that the union demands, if pressed, would make the shutting down or removal of the plant inevitable.

The actual facts in the *Remington Rand* case are of course yet to be presented and weighed. Some which may be presented can be surmised from the decision in *N. L. R. B. v. Remington Rand,* 94 Fed. (2d) 862, (C. C. A. 2d, 1938). It appears that between 1934 and 1937 Remington Rand, at least in the eyes of the National Labor Relations Board, had refused to bargain collectively as required by statute, had improperly influenced strike votes, had instigated company unions, had locked out employees, and had in fact moved some of its plants in order to avert unionization. The decision of the New York Court of Appeals does not hold that these actions, even if proved, would of themselves constitute a basis of directors' liability. It rather holds that proof of actions such as these may give rise to liability on the part of the corporation's directors if it is also proved that the best economic interests of the corporation were not thereby served.

DIRECTORSHIPS MIGHT BE UNATTRACTIVE

If it may be assumed that the courts, in applying the rule of this New York case, will be diligent in avoiding the substitution of their own hindsight for the judgment of corporate directors necessarily made in advance of the result, then it would not appear that the decision need alarm any corporate director exercising his best judgment as to the interests of the corporation. The slightest tendency by any court, however, to "second guess" boards of directors on decisions, merely because their decision, viewed retrospectively, appears to have been not the best of all possible decisions could have the effect not only

of making corporate directorships most unattractive, but also of destroying the balance upon which the theory of collective bargaining is based. If, as is commonly believed, the right to strike in support of its demands is imperative from the standpoint of a labor union, the right to close down or move a plant is equally imperative from the standpoint of an employer—assuming an honest belief on the part of the employer that such closing down or removal would be economically more advantageous than submission to the demands of the union.

MILLIKAN PAYS TRIBUTE TO CRAIG

(Continued from page 218)

that he paid the very closest attention and gave adherence to the doctrine of judicial precedent. His opinions are replete with citations of leading cases in support of his stated conclusions; and yet upon occasion we find that in his consideration of the particular facts and circumstances involved in the construction of a statute, he might lean a bit away from judicial precedent and independently apply the principles of reason so that they might in their application fit the particular facts and circumstances.

SUPREME COURT FOLLOWS CRAIG

"In the case of *Levin v. Superior Court,* a case in which the court was asked to issue its writ to compel the Superior Court of this county to issue a commission to take a deposition, Mr. Justice Craig in writing for the court said this: 'Although the code provisions include all of the time from the service of summons until final determination of a suit, and in general the issuance of the commission is a matter of right, as applied to a particular case, this must be taken with such qualification as the facts of such case may demand. The law does not require an idle act. It would not compel the issuance of a commission if the application were made at date so late before the trial that the deposition desired could not be taken in time to be used. At least to the extent, therefore, that the trial court may properly consider the claims of the party seeking a commission to take a deposition, for a continuance of trial date in order that the deposition may be used, discretion exists to refuse an application for a commission.'

"The reasoning of Mr. Justice Craig in that opinion and the application of the principle there stated later became the law in this state in an opinion of our Supreme Court reported in 16 Cal. (2d), *Hays v. Superior Court.* I cite that to indicate that while he did adhere to precedent, his was a desire so to apply legal principles to facts and circumstances that justice might in each case result. I submit his opinions bear out that purpose.

"At a time after Mr. Justice Craig left this court he rendered distinguished service to the Bench and Bar of this state in assisting in the preparation of California Jury Instructions,

Criminal, which were under the general editorship of Judge William J. Palmer of our Superior Court; and I have the word of Judge Palmer that his labors were industrious, highly intelligent and enterprising. The work done by him in applying principles of law as set forth in that volume of instructions will stand for a long time as a monument to his name and to his industry.

"I am sure, if the Court please, that I speak the mind and heart of many, many friends of Mr. Justice Craig on this occasion when I say that the loyalty displayed by those friends to Judge Craig through the many years of his public service and down to the time of his passing are a monument to the real soul of a man whose own sense of loyalty to his friends was one of the high purposes of his life."

CROSS-EXAMINATION— A JUDGE'S VIEWPOINT

(Continued from page 224)

duction. Observation may, in the first place, have been faulty leading to the omission of certain details and the addition of others. There is a tendency for a person to confound what he imagines with what he has seen or heard. When details are forgotten, we try to fill in the gaps in what we remember. Everything that seems reasonable in the light of what we do remember is recalled. A witness may be unconsciously misled by suggestion, sometimes by a sense of his own importance, and give way to unintentional elaboration and exaggeration. Here we have then the frailties of human testimony: faulty or superficial observation, faulty memory, mistaken inferences, prejudice, rationalization and projection, about which much has and could be written.

Moreover, there is the tendency for witnesses to exaggerate the facts favorable to the cause for which they are testifying and to ignore opposing circumstances. That reflects the sense of partisanship of a witness towards the side in whose behalf he is called—a partisanship all the more potent for being for the most part unconscious.

Added to all this is the confusion of those who, as has been well said, are suddenly plunged into a strange environment, that

of the court room, where they are expected to conduct themselves in a manner foreign to their custom and under a restraint not conducive either to clear consecutive thought or to free expression.

Baron Bramwell pointed out other powerful psychological factors which are fundamental in good cross-examination but which too often are ignored. He said that "witnesses under cross-examination seem to labor under the notion that the cross-examiner is an opponent to them, that he wants to make them say something they ought not to say, that he is laying traps for them. They forget most commonly, or act as if they forget, that they are to tell not only the truth but the whole truth, and think if they don't tell a lie affirmatively they may negatively suppress the truth. It is this feeling of opposition to the cross-examiner, this state of mind of 'contrary flexure' with which the cross-examiner has to deal, in addition to the accompanying sense of partisanship."

Cross-examination is a job requiring a clear head, good

judgment, an understanding of human nature, infinite patience and an imperturbable good temper; but it has great rewards.

PREPARATION AS AN AID TO CROSS-EXAMINATION

With our conception of a trial as an earnest endeavor to arrive at the truth and the justice of a controversy comes the realization that the preparation of a lawsuit is the most important factor in its outcome. It is axiomatic that a case well prepared is more than half tried. It would be well to begin with your own client and his witnesses. As Thomas Fuller so quaintly but pertinently put it in the language of his day, the lawyer "not only hears but examines his clients and pinches the cause when he fears it is foundered. For many clients in telling their case rather plead than relate it, so that the advocate hears not the true state of facts till opened by the adverse party." Resort to pre-trial practice is a great help: the bill of particulars, examination before trial, discovery and inspection, demand for admissions.

In addition to making himself thoroughly familiar with his own case, the lawyer should try to anticipate the case he will have to meet. He can often ascertain who some of the witnesses are that are likely to be called by the other side and to what they may be expected to testify. He can plan, in a general way, the lines on which he will conduct their cross-examination and endeavor to collect as much information as possible that may be of assistance in that connection. Above all, the lawyer in preparing for trial searches for any writing tending to establish his case for, as one very able judge said, perhaps going to an extreme: "The smallest slip of paper is sooner to be trusted for truth than the strongest and most retentive memory ever bestowed on mortal man."

The lawyer then should be fully prepared on the facts and on the law. For he must know the law if he is to appraise the significance of the facts testified to or omitted by the witnesses. Baron Wilde had a motto which every lawyer might well make his own. "I never," said he, "despise any opponent so as to become careless; I never fear any so as to become unnerved."

(Continued in the next issue)